

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEVIN L. MILLER,

Plaintiff,

v.

COMMISSIONER OF THE STATE OF  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

Case No. 1:21-cv-00176-DAD-BAM (PC)

ORDER DENYING PLAINTIFF'S MOTION  
TO APPOINT COUNSEL

(ECF No. 13)

Plaintiff Kevin L. Miller ("Plaintiff") is a former county jail inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's complaint has not yet been screened.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed March 12, 2021. (ECF No. 13.) Plaintiff states that he is unable to afford counsel, his imprisonment will greatly limit his ability to litigate, and the issues involved in this case are complex and will require significant research and investigation. Plaintiff also states that he has limited access to the law library and limited knowledge of the law, a trial in this case will likely involve conflicting testimony, and counsel would better enable Plaintiff to present evidence and cross examine witnesses. Plaintiff states that he has made repeated efforts to obtain a lawyer, and therefore he requests that the Court appoint a member of the Bar as counsel in this case. (*Id.*)

Plaintiff is informed that he does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the Court cannot require an attorney to

1 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist.  
2 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the Court may  
3 request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at  
4 1525.

5 Without a reasonable method of securing and compensating counsel, the Court will seek  
6 volunteer counsel only in the most serious and exceptional cases. In determining whether  
7 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on  
8 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
9 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).  
10 The Court has considered Plaintiff’s request and does not find the required exceptional  
11 circumstances. Even if it is assumed that Plaintiff is not well versed in the law and that he has  
12 made serious allegations which, if proved, would entitle him to relief, his case is not exceptional.  
13 This Court is faced with similar cases filed by prisoners, with limited financial resources and  
14 limited knowledge of the law, who are proceeding *pro se* almost daily. These prisoners also must  
15 conduct legal research and prosecute claims without the assistance of counsel.

16 Furthermore, at this stage in the proceedings, the Court cannot make a determination that  
17 Plaintiff is likely to succeed on the merits. Plaintiff’s complaint has not yet been screened, and  
18 therefore the Court cannot evaluate the likelihood of success on the merits. Finally, based on a  
19 review of the record in this case, the Court does not find that Plaintiff cannot adequately articulate  
20 his claims.

21 Accordingly, Plaintiff’s motion for appointment of counsel, (ECF No. 13), is HEREBY  
22 DENIED without prejudice.

23  
24 IT IS SO ORDERED.

25 Dated: March 15, 2021

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
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